

Title: Energy Policy Act of 2005, Section 1835, Split-Estate Federal Oil and Gas Leasing and Development Practices

Task: The Secretary shall review the current policies and practices with respect to management of Federal subsurface oil and gas development activities and their effects.

- (1) a comparison of the rights and responsibilities under existing mineral and land law for the owner of a Federal mineral lease, the private surface owners and the Department;
- (3) recommendations for administrative or legislative action necessary to facilitate reasonable access for Federal oil and gas activities while addressing surface owner concerns and minimizing impacts to private surface.

Brief Summary:

In order to plan for, lease, and manage the Federal subsurface mineral estate underlying private surface estate, BLM must comply with the provision of the Act under which the surface was patented, for example, the Stock Raising Homestead Act. BLM must also comply with the provision of the Mineral Leasing Act and various regulations regarding land use planning, leasing, bonding, operations, and reclamation. Operator guidance for surface operations was recently finalized in the Oil and Gas Gold Book found at www.blm.gov/bmp BLM also operates under the policy outlined in expired Washington Office Instruction Memorandum 2003-131. In addition, BLM is updating Onshore Oil and Gas Order No. 1, currently out for public review.

Split-estate Federal Oil and Gas Leasing and Development Practices			
	Stage	Practices	Statute, Regulation, Policy, or Practice
Definition		<u>Split Estate:</u> Means lands where the surface is owned by an entity or person other than the owner of the Federal or Indian oil and gas.	Proposed Onshore Oil and Gas Order No.1 (published in the Federal Register on July 27, 2005 (70 FR 43349)) Currently

			a draft document out for public review.
Leasing Decisions & Leasing	Land Use Planning	<p><u>Protective Leasing Stipulations:</u> BLM notifies the public of their opportunity to participate and comment on the preparation of land use plans and amendments. BLM does not specifically notify individual surface owners that land use planning decisions are being made which could affect the oil and gas development actions on their surface. (Planning decisions include: No Lease; Lease with Standard Terms and Conditions; Lease with Major Constraints; Lease with Moderate Constraints; and are typically based on resources such as wildlife, steep slopes, wetlands.)</p> <p>BLM does not apply any stipulations specific to split estate.</p> <p><u>Issue & Recommendation:</u></p>	Standard Land use Planning Practice Also refer to: 43CFR1610.2
	Pre- & Post-Lease Notification	<p><u>Pre-lease Surface Owner Notification:</u> BLM offers for lease parcels that have been nominated by the public and that are in conformance with the BLM or FS land use plan.</p> <p>BLM notifies the public of pending lease sales and provides a 45-day review period. BLM posts the Competitive Sale List and stipulations on the BLM State Office website; mails paper copies to those parties who have requested copies, including other surface managing agencies; and posts the List and stipulations in the affected BLM Field Offices.</p> <p>BLM does not directly notify the surface owner prior to offering for lease subsurface minerals under the surface estate. However, when processing isolated private surface split estate tracts for lease, the BLM Milwaukee Field Office notifies each surface owner in writing of proposed leasing. Notification includes providing a tract map and copies of acquisition deeds, as well as</p>	Standard Oil and Gas Leasing Practice Also refer to: 43CFR3120.4-2

		<p>requesting input regarding the owner's concerns and surface uses/resources that may require protective measures. Surface owner objections to allowing surface occupancy are treated as a protest.</p> <p><u>Issue & Recommendation:</u></p>	
		<p><u>Post-Lease Sale Notification:</u> Results of competitive lease sales and day-after-the-sale filings are posted on the respective BLM State Office website. Paper copies are also available upon request. BLM does not directly notify the affected surface owner that a lease sale of the mineral interests under their surface has occurred. However, the BLM Milwaukee Field Office provides post-lease sale notification to individual surface owners, when requested.</p> <p><u>Issue & Recommendation:</u></p>	Standard Lease Notification Practice
Development	Within Forest Service Boundaries	<u>Lead:</u> For split estate lands within FS administrative boundaries, BLM has the lead responsibility, unless there is a local BLM/FS agreement that gives the FS this responsibility.	Proposed Onshore Oil and Gas Order No.1
	Notification & Pre-Planning Field Development	<p><u>Notification:</u> The operator must make a good faith effort to notify the private surface owner before entry and obtain an access agreement from the surface owner.</p> <p>The operator should contact the private surface owner prior to entering upon private surface to stake a well location and access road or conduct cultural or biological surveys.</p>	<p>Proposed Onshore Oil and Gas Order No.1</p> <p>Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development (Gold Book)</p>

		<u>Pre-Onsite Coordination:</u> Early coordination with the BLM and the appropriate surface management agency or Bureau of Indian Affairs (BIA) office is encouraged as procedures and requirement vary by agency or reservation. Operators are strongly encouraged to consult with the appropriate surface management agency as early as possible before filing an APD to identify local requirements and potential concerns.	Gold Book
	Notice of Staking (NOS)	<u>Notice of Staking Requirements:</u> Each Notice of Staking must contain the name, address, and telephone number of the surface owner. <u>Issue & Recommendation:</u>	Proposed Onshore Oil and Gas Order No.1
		<u>Scheduling Onsite Inspection:</u> Processing (b) Within 10 days of receiving the APD package, BLM, in coordination with the operator and Surface Managing Entity (including, in the case of split estate, the private surface owners), if appropriate, will schedule a future date for the onsite inspection unless the onsite inspection was held as part of the Notice of Staking (see Section III.F. of this Order). The onsite inspection will be held as soon as practicable based on schedules and weather conditions. <u>Issue & Recommendation:</u>	Proposed Onshore Oil and Gas Order No.1
		<u>Surface Owner Notification:</u> BLM will invite the surface owner to the onsite inspection to assure that their concerns are considered. Surface owner concerns will be considered to the extent that they are consistent with Federal land management policy. <u>Issue & Recommendation:</u>	Proposed Onshore Oil and Gas Order No.1

		<u>Onsite Inspection:</u> BLM should solicit the surface owner's recommendations for addressing development issues such as the locations of wells, roads, production facilities; compressors; pipelines, utilities, produced water disposal, reclamation preferences, noise concerns, and treatment of resources on the property. BLM will take into consideration the needs of the surface owner when reviewing the Application for Permit to Drill.	Gold Book
	Application for Permit to Drill (APD)	<u>Scheduling Onsite Inspection:</u> (Same as Notice of Staking) <u>Surface Owner Notification:</u> (Same as Notice of Staking) <u>Issue & Recommendation:</u>	Proposed Onshore Oil and Gas Order No.1
		<u>Onsite Inspection:</u> (Same as Notice of Staking)	
		<u>Protection Standards, Limits:</u> BLM will make the final determination of appropriate surface use requirements. In doing so, BLM will carefully consider the views of the surface owner and the effect on the surface owner's use of the surface before implementing mitigation measures. <u>Issue & Recommendation:</u>	Proposed Onshore Oil and Gas Order No.1
		BLM will offer the surface owner the same level of surface protection BLM provides on Federal surface. BLM will not apply standards or conditions that exceed those that would normally be applied to Federal surface, even when requested by the operator.	Gold Book

		<p><u>Surface Owner Agreement:</u> The operator must make a good faith effort to notify the private surface owner before entry and obtain an access agreement from the surface owner. The access agreement may include terms or conditions of use, be a waiver, or an agreement for compensation. The operator must describe the terms of the Surface Owner Agreement, if one was obtained, in sufficient detail in the Surface Use Plan of Operations to enable BLM to evaluate impacts to adjacent off-site Federal and Indian lands and resources and prepare the necessary NEPA documentation.</p>	Proposed Onshore Oil and Gas Order No.1
		<p>The operator should contact the private surface owner prior to entering upon private surface to stake a well location and access road or conduct cultural or biological surveys. Each Application for Permit to Drill (APD), Notice of Staking (NOS), or Sundry Notice (SN) to conduct new surface disturbing activities must contain the name, address, and the telephone number of the private surface owner and if available, the E-mail address. The operator is encouraged to negotiate an agreement with the surface owner. Negotiating an agreement in good faith provides a forum through which the operator and surface owner can discuss the preferences and needs of the surface owner. In addressing those needs, the operator may be able to modify the development proposal to minimize reclamation and surface damage costs. These costs can be minimized by placing roads and facilities in locations that the surface owner can use, thereby lessening the reclamation obligations of the operator. The agreement between the surface owner and the operator is confidential, and neither the surface owner nor the operator is required to provide the details of the agreement to the BLM or other agencies. However, the APD Surface Use Plan of Operations should contain sufficient detail about any aspects of the</p>	Gold Book

		agreement necessary for National Environmental Policy Act (NEPA) documentation and to determine that the operations will be in compliance with laws, regulations, Onshore Orders, and agency policies.	
		<p><u>Surface Use/Owner Agreement Certification:</u> The operator must certify to BLM that (1) it made a good faith effort to notify the surface owner before entry and (2) that an agreement with the surface owner has been reached or that a good faith effort to reach an agreement failed.</p> <p><u>Issue & Recommendation:</u></p>	Proposed Onshore Oil and Gas Order No.1
		Prior to approval of the APD, (or Sundry Notice to conduct new surface disturbing activities), the operator must certify as part of the complete application that it has made a good faith effort to reach an agreement with the private surface owner.	Gold Book
		<p><u>Resource Survey Information Needs - General:</u> When authorizing lease operations on split estate lands where the surface is not Federally-owned and the oil and gas is Federal or Indian, BLM must comply with NEPA, the National Historic Preservation Act, the Endangered Species Act, and related Federal statutes.</p> <p><u>Issue & Recommendation:</u></p>	Proposed Onshore Oil and Gas Order No.1
		The BLM may need additional cultural resources, threatened and endangered species, or other resource survey information in order to comply with the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), or to complete an environmental analysis under the National Environmental Policy Act. In cases where the operator has agreed to complete the needed surveys, the operator will be responsible for making access arrangements with the private surface owner.	Gold Book

		<p><u>National Historic Preservation Act:</u> Federal agencies take into account the effects of their undertakings on properties on or eligible for the National Register of Historic Places whether those effects are on Federal lands, private surface, or split estate. The law defines undertakings as projects, activities, or programs, including those requiring a Federal permit, license, or approval. The area of potential effect for an undertaking is defined as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if such properties exist. Adverse effects includes physical destruction; introduction of visual, atmospheric or audible elements that diminish integrity; and transfer, lease or sale outside Federal ownership or control. The 106 requirement to consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking applies regardless of the location of the historic property.</p> <p><u>Issue & Recommendation:</u></p>	Standard Cultural and Historic Resource Practice Also refer to: National Historic Preservation Act Sections 106 and 110; 8100 manual series; 36 CFR Part 800; 8100 manual and handbook series; BLM/SHPO protocols.
		<p><u>Endangered Species Act:</u> BLM must comply with provisions of the Endangered Species Act on split estate lands. This may result in required plant or animal surveys and mitigation to reduce impacts to endangered species, and consultation with the US Fish & Wildlife Service.</p> <p><u>Issue & Recommendation:</u></p>	Endangered Species Act of 1973, Section 7
		<p><u>Sensitive Species:</u> BLM manages sensitive species to preclude the need to list as endangered species under the Endangered Species Act. This may result in required plant or animal surveys and mitigation to reduce impacts to sensitive species.</p> <p>BLM and the US Fish & Wildlife Service work together to address sensitive</p>	BLM 6840 Manual – Special Status Species

		species issues to preclude the need for listing under the Endangered Species Act. <u>Issue & Recommendation:</u>	
		<u>Surface Use Plan of Operations:</u> Drilling Plan (i) Plan of Operations. The Surface Use Plan of Operations must: <ul style="list-style-type: none"> • where the surface is privately owned, include a certification of surface owner agreement or an adequate bond, as described in Section VI. of this Order. 	Proposed Onshore Oil and Gas Order No.1
	Bonding	<u>Operations & Reclamation Bond – All Operations:</u> BLM requires a bond for operations conducted on Federal and non-Federal surface “in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s) and the restoration of any lands or surface waters adversely affected by lease operations after cessation of oil and gas operations on the lease(s)...” <u>Issue & Recommendation:</u>	Refer to 43CFR3104
		<u>Surface Damages Bond - Surface Estate:</u> If no agreement was reached, the operator must submit an adequate bond to BLM for the benefit of the surface owner sufficient to pay for loss or damages, such as loss of or damage to agriculture, other tangible improvements, or structures, as required by the specific statutory authority under which the surface was patented or the terms of the lease. The minimum acceptable bond amount is \$1,000. <u>Issue & Recommendation:</u>	Proposed Onshore Oil and Gas Order No.1

		If the surface owner and operator fail to reach an agreement, the operator must file a bond (determined by BLM, minimum of \$1,000) with BLM for the benefit of the surface owner to cover compensation for reasonable and foreseeable loss of crops and damages to tangible improvements.	Gold Book
		<u>Surface Owner's Right to Object to the Sufficiency of the Bond:</u> Surface owners have the right to appeal the sufficiency of the bond. Before the approval of the APD, BLM will make a good faith effort to contact the surface owner to assure that they understand their rights of appeal. <u>Issue & Recommendation:</u>	Proposed Onshore Oil and Gas Order No.1
		The BLM will advise the surface owner of appeal rights and will review the value of the bond if the surface owner appeals.	Gold Book
	Inspection and Enforcement	<u>Compliance:</u> Noncompliance with the conditions of the Application for Permit to Drill Surface Use Plan and Conditions of Approval may result in an Incident of Non-compliance and assessments. <u>Issue & Recommendation:</u>	Oil and Gas Leasing Reform Act of 1987
	Reclamation	<u>Pre-reclamation Review and Approval:</u> Plans for surface reclamation are a part of the Surface Use Plan of Operations... For wells not having an approved plan for surface reclamation, operators must submit a proposal describing the procedures to be followed for complete abandonment, including a map showing the disturbed area and roads to be reclaimed. The operator must submit the request to BLM. BLM will forward the request to the FS or other Surface Managing Entity (Private Surface owner), if appropriate.	Proposed Onshore Oil and Gas Order No.1

		<u>Issue & Recommendation:</u>	
		<u>Post-Reclamation Approval:</u> There are no current requirements to obtain the surface owner's approval. In practice, however, offices generally seek the surface owner's written concurrence that the reclamation is satisfactory. <u>Issue & Recommendation:</u>	Standard Practice - No Statutory or Regulatory Requirement
		Upon completion of reclamation operations, the lessee or operator must notify the BLM or the FS using Form 3160-5, Final Abandonment Notice, when the location is ready for inspection. Final abandonment will not be approved until the surface reclamation work required in the Surface Use Plan or Subsequent Report of Plug and Abandon has been completed to the satisfaction of the BLM or FS and Surface Managing Entity (Private Surface owner), if appropriate. <u>Issue & Recommendation:</u>	Draft Onshore Oil and Gas Order No.1